

CT 96-1
Tax Type: CIGARETTE TAX
Issue: Possession of Unstamped Cigarettes

STATE OF ILLINOIS
DEPARTMENT OF REVENUE
OFFICE OF ADMINISTRATIVE HEARINGS
SPRINGFIELD, ILLINOIS

THE DEPARTMENT OF REVENUE)	
OF THE STATE OF ILLINOIS)	Docket #
)	
v.)	IBT #
)	
TAXPAYER)	
)	Karl W. Betz
)	Administrative Law Judge
Taxpayer)	

RECOMMENDATION FOR DISPOSITION

APPEARANCES

ATTORNEY FOR TAXPAYER.

SYNOPSIS

THIS CAUSE CAME ON TO BE HEARD FOLLOWING CONFISCATION BY A DEPARTMENT AGENT OF VARIOUS CARTONS AND PACKAGES OF CIGARETTES FROM THE XXXXX (OPERATED BY TAXPAYER, THE "TAXPAYER") IN XXXXX, ILLINOIS. A HEARING WAS CONDUCTED ON DECEMBER 5, 1994 AND WAS CONCLUDED ON A DEFAULT BASIS. AFTER A NOTICE OF FINAL ASSESSMENT [NO. XXXXX] WAS ISSUED BY THE DEPARTMENT, THE TAXPAYER THROUGH COUNSEL MOVED TO VACATE THE DEFAULT JUDGMENT AND SAID MOTION WAS GRANTED BY THE DEPARTMENT BY ORDER ISSUED JULY 13, 1995.

ON AUGUST 23, 1995, I CONDUCTED AN EVIDENTIARY HEARING IN THIS MATTER TO DETERMINE IF THE PACKAGES OF CIGARETTES CONFISCATED FROM THE TAXPAYER DID NOT HAVE CIGARETTE TAX STAMPS AFFIXED THERETO. THIS MATTER

IS BOTH A CONFISCATION HEARING PURSUANT TO SECTION 18A OF THE CIGARETTE TAX ACT (35 ILCS 130/18A) AND A PENALTY HEARING UNDER SECTION 18B OF THE ACT.

DEPARTMENT SPECIAL AGENT DAVID LIENARD, WHO CONDUCTED THE INVESTIGATION AND SEIZED THE CIGARETTES, TESTIFIED AT THE HEARING AND HIS INVESTIGATION REPORT (DEPT. EX. NO. 3) WAS ADMITTED INTO THE RECORD. (TR. P. 6)

TAXPAYER, WHO WAS REPRESENTED THROUGH COUNSEL, DID NOT OFFER ANY TESTIMONY OR DOCUMENTARY EVIDENCE AT THE HEARING.

AFTER REVIEWING THE COMPLETE TRANSCRIPT OF RECORD INCLUDING ALL DOCUMENTS ADMITTED THEREIN, I RECOMMEND THE ISSUES BE RESOLVED IN FAVOR OF THE DEPARTMENT.

FINDINGS OF FACT

1. TAXPAYER CONDUCTED RETAIL BUSINESS OPERATIONS IN ILLINOIS DURING JANUARY, 1990 BY SELLING SUNDRY ITEMS OF TANGIBLE PERSONAL PROPERTY INCLUDING CIGARETTES AT A CONVENIENCE TYPE STORE IN XXXXX. (TR. PP. 11-13; DEPT. EX. NO. 3, P. 2)
2. TAXPAYER'S REVENUES REPORTED ON ITS SALES TAX RETURNS ALSO INCLUDED RECEIPTS FROM SALES OF PETROLEUM PRODUCTS AND LIQUOR. (TR. PP. 12-13)
3. THE TAXPAYER CARRIED CIGARETTES IN ITS INVENTORY OF GOODS AVAILABLE FOR RETAIL SALE ON JANUARY 29, 1990. (TR. P. 9; DEPT. EX. NO. 3, P. 4)
4. SPECIAL AGENT LIENARD SEIZED 1,204 ORIGINAL PACKAGES OF CIGARETTES AT THE TAXPAYER'S XXXXX BUSINESS LOCATION ON JANUARY 29, 1990. (TR. PP. 8-12; DEPT. EX. NO. 3)

5. EACH ONE OF THE SEIZED CIGARETTE PACKAGES DID NOT HAVE AN ILLINOIS CIGARETTE TAX STAMP ON IT. (TR. PP. 8-9; DEPT. EX. NO. 3, PP. 2-5)

CONCLUSIONS OF LAW

ALTHOUGH THE CONFISCATED CIGARETTE PACKAGES CONTAINED MISSOURI STAMPS, THEY WERE NOT TAX STAMPED AS REQUIRED BY PROVISIONS OF THE ILLINOIS CIGARETTE TAX ACT (35 ILCS 130/1 ET SEQ.), PARTICULARLY AS APPLIED TO RETAILERS OF CIGARETTES IN ILLINOIS, 35 ILCS 130/2 AND 3. THE SPECIAL AGENT ALSO VERIFIED THAT TAXPAYER WAS NOT LICENSED OR AUTHORIZED TO POSSESS UNSTAMPED CIGARETTES AS EITHER A DISTRIBUTOR OR MULTI-STATE STAMPER. (TR. PP. 11-12; DEPT. EX. NO. 3, PP. 4-5, 16-17)

AT THE AUGUST 23, 1995 EVIDENTIARY HEARING, THE TAXPAYER DID NOT OFFER ANY EVIDENCE TO SHOW THAT THE CIGARETTE PACKAGES HAD ILLINOIS TAX STAMPS AFFIXED THERETO.

I FIND THE DEPARTMENT HAS ESTABLISHED A PRIMA FACIE CASE THAT STANDS UNREBUTTED. I CONCLUDE THE FORFEITURE AND PENALTY PROVISIONS OF SECTIONS 18A AND 18B OF THE ACT SHOULD APPLY.

RECOMMENDATION

BASED UPON MY FINDINGS AND CONCLUSIONS AS STATED ABOVE, I RECOMMEND THE DEPARTMENT ASSESS THE SECTION 18B PENALTY OF \$15.00 FOR EACH PACKAGE OF CIGARETTES IN EXCESS OF 100 PACKAGES. THIS TOTALS TO \$16,560, AS 1204 SEIZED UNSTAMPED PACKAGES LESS 100 IS 1104 PACKAGES SUBJECT TO PENALTY.

I ALSO RECOMMEND THE 1204 PACKAGES SHALL REMAIN IN POSSESSION OF THE DEPARTMENT FOR DISPOSITION IN ACCORDANCE WITH PROVISIONS OF THE ACT.

KARL W. BETZ
ADMINISTRATIVE LAW JUDGE